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EXTRAORDINARY

PART II—Section 2

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LOK SABHA

The following Bill was introduced in the Lok Sabha on 29th April, 1955:—

BILL No. 15 OF 1955

A Bill to provide an adoption procedure to safeguard the interests of adopted children and the rights of their natural and adoptive parents.

BE it enacted by Parliament in the Sixth Year of the Republic of India as follows:—

1. (1) This Act may be called the Indian Adoption of Children Act, 19 . Short title
and extent.

(2) It extends to the whole of India.

2. In this Act, unless the context otherwise requires,—

Definitions.

(a) a 'child' means a person of either sex who has not attained the age of eighteen years;

(b) 'natural parents' means the father and the mother of whom the child is born;

(c) 'adoptive parent' means any adult person who has adopted a child or either of two persons married to each other who have adopted a child;

(d) 'legal guardian' means

(i) both parents if both are living; or

(ii) one parent if the other parent is dead; or

(iii) the mother only of a child born out of wedlock; or

(iv) the legal guardian of the child if parental rights with authority to consent to adoption have been legally acquired by such guardian; or

(v) the executive head of a public or private child-caring agency or institution that has acquired the legal right to consent to the adoption of the child;

(e) 'court' means a court which is a court having jurisdiction over children's cases.

Manner of
adoption.

3. No child shall be given or taken in adoption except as provided for in this Act:

Provided that nothing contained in this Act shall affect the provisions of Hindu Law relating to the adoption of a son.

Eligibility
for adoption.

4. (1) A child below eighteen years of age only may be taken in adoption.

(2) Any adult person or any two persons married to each other may petition for adoption of a child subject to the jurisdictional restriction placed by law on residence:

Provided that the husband or wife of a married petitioner, not living separate from the petitioner, shall be required to join in the petition:

Provided further that a natural parent, consenting to the adoption by a step-parent, shall not be required to join as a petitioner.

(3) The court shall give permission for adoption to only such persons as are:

(i) in the opinion of the court competent to give protection to the child;

(ii) considered fit to care for the child properly; and

(iii) older in age than the person to be adopted.

Petition for
adoption.

5. (1) A petition made under sub-section (2) of section 4 shall be accompanied by the written consent to the adoption, as specified in section 6. If the natural parents of the child do not consent to the adoption, the person or agency that does consent, shall file at the time the petition is filed or within a reasonable time thereafter documentary evidence of his authority to consent to the adoption of the child.

(2) The petition shall contain identifying information concerning the child and the petitioners:

Provided that no such information concerning the child as would identify the natural parents shall be necessary if the petition alleges

that an agency has legally acquired the right to consent to the adoption:

Provided further that if a change of name of the child is desired, the petition shall state the name by which the child is to be known.

(3) The petition shall contain the following particulars:—

(i) Name, sex and age of the child;

(ii) Names of natural parent or parents or the legal guardian or the executive head of the public or private child-caring agency or institution that has acquired the right to consent to the adoption;

(iii) Age, sex and occupation of natural parent or parents or legal guardian;

(iv) Place of domicile of natural parents or legal guardian;

(v) Name or names of petitioner or petitioners;

(vi) Age, sex and occupation of petitioner or petitioners;

(vii) Place of domicile of petitioner or petitioners;

(viii) Circumstances in which the adoption of the child is desired;

(ix) Such other particulars as may be prescribed.

6. (1) If parental rights over the child have not been terminated in the written consent supported by an affidavit to the adoption proposed in the petition shall be required from:—

Consent to Adoption

(a) both natural parents; or

(b) the mother only if the child is born out of wedlock;

(c) one natural parent if the other is dead:

Provided that the consent of the father of the child shall also be required if the child has been legitimized as provided by law.

(2) If both parents are dead or if the parental rights over the child have been terminated in a manner provided by law, written consent supported by an affidavit to the adoption proposed in the petition shall be required from:

(a) the person standing in *loco parentis* if parental rights with authority to consent to adoption have been legally acquired by such person; or

(b) the executive head of a public or private child-caring agency or an institution that has acquired the legal right to consent to the adoption of the child,

(3) If the child is over ten years of age the consent of the child shall also be required to the adoption proposed in the petition:

Provided that no such consent shall be necessary, if the court is of opinion that it will be in the best interests of the child not to insist on such consent. In such cases the court shall in writing state reasons for waiving the requirement of such consent.

(4) Notwithstanding anything contained in sub-section (3) the court shall in no instance waive the requirement of the consent of the child if, knowing about the adoption, the child objects to it.

(5) After the petition for adoption has been filed withdrawal of consent shall not be allowed:

Provided that the court may allow the withdrawal of consent if on its finding, to be stated in writing, it considers such withdrawal to be in the best interests of the child.

Termination
of parental
rights.

7. (1) Termination of parental rights may be accomplished by action through a court having jurisdiction over children's cases which may for valid reasons order the removal of the child from the custody and legal control of his natural parents and commit the child to the care of some person or public or private child-caring agency or institution.

(2) Parental rights may also be severed by voluntary action on the part of the parents subject to validation by order of a court having jurisdiction over children's cases.

Issue of
notices by
court.

8. Upon the filing of a petition the court shall fix a date for its hearing. Notice of the date of hearing shall be sent to the petitioners, the legal guardians, and the person or agency, if any, which arranged for the adoption.

Hearing
of
petition.

9. (1) The petitioners and legal guardians of the child shall have the right to attend the proceedings of the court in respect of the petition for adoption.

(2) The person or agency, if any, which arranged for the adoption shall have the right to be represented and heard by the court.

(3) In the case of adoption by a step-parent, the natural parent who is married to and not living apart from the step-parent shall be given notice to be present at the proceedings in court.

(4) The child, if he is old enough to make his consent to the adoption necessary, shall also be present at the proceedings:

Provided that if at any stage during the course of proceedings the court is satisfied that the attendance of the child is not necessary for the purpose of the proceedings, the court may dispense with his

presence and proceed with the hearing of the petition in the absence of the child.

10. (1) Save as provided in this Act, no person shall be present at any sitting of the court for hearing a petition for adoption except—

Presence of persons in court during the hearing of a petition.

(a) the officers of the court,

(b) the parties to the proceedings and other persons directly concerned with the proceedings, and

(c) such other persons as the court may permit to be present.

(2) Notwithstanding anything contained in sub-section (1), if at any stage during the proceedings, the court considers it to be expedient in the interests of the child or other parties concerned that any person including the petitioners, the parents, guardian or the child himself should withdraw, the court may give such directions, and if any person refuses to comply with such direction, the court may have him removed and may, for this purpose, cause to be used such force as may be necessary.

11. (1) The court, after considering the evidence submitted at the hearing on the petition and if satisfied that the petitioner is qualified to maintain, care for and educate the child and that the child is suitable for adoption, shall pass a decree of adoption.

Adoption decree.

(2) The decree of adoption shall declare the child to be the child and legal heir of the adopting parent or parents, entitled to all the rights and privileges and subject to all obligations of a child born to them in lawful wedlock and no longer the child or the legal heir of the natural parent or parents and no longer entitled to any of the rights and privileges or subject to any of the obligations of a child in relation to his natural parents.

(3) The decree shall state the name by which the child is thenceforth to be known.

(4) If the petition for adoption is withdrawn or denied,—

(a) the child shall be returned to the custody of his natural parents or legal guardian, as the case may be, or

(b) in case the custody of the child is in dispute the court shall certify the case for appropriate action and disposal to a court having jurisdiction to determine the custody of children.

12. After two years from the date of adoption any irregularity in the proceedings in respect of a petition for adoption shall be deemed cured and the validity of a decree shall, not thereafter be subject to attack on such grounds in any direct or collateral proceedings.

Invalidation,

Records of adoption cases. 13. The information in all records, books and papers relating to adoption cases in the court or on the files of any agency or institution participating in the adoption case shall be kept confidential.

Appeals. 14. (1) Subject to the provisions of this section, any person aggrieved by an order made by a court under this Act may, within thirty days from the date of such order, prefer an appeal to the District Court:

Provided that the District Court may entertain the appeal after the expiry of the said period of thirty days if it is satisfied that the appellant was prevented by sufficient causes from filing the appeal in time.

(2) No second appeal shall lie from an order of the District Court passed in appeal under this section.

Revision. 15. The High Court may, at any time, either of its own motion or on an application received in this behalf, call for the record of any proceeding in which any court or District Court has passed an order for the purpose of satisfying itself as to the legality or propriety of any such order and may pass such order in relation thereto as it thinks fit:

Provided that the High Court shall not pass an order under this section prejudicial to any person without giving him a reasonable opportunity of being heard.

Penalty. 16. Any person who contravenes, or abets the contravention of, the provisions of section 3 shall on conviction, be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

STATEMENT OF OBJECTS AND REASONS

To promote the best interests of the child, and to safeguard the rights of his natural and his adoptive parents an effective adoption procedure is necessary. This will reduce to a minimum the hazards that now surround adoption in many places, and would also bring about a wider use of the legal safeguards to which children without families of their own are entitled.

At present adoption of "Dattakavidhan" is considered necessary only to perform sacramental and ablution rites for ancestors, and only a son is entitled to perform this ceremony. Therefore, girls are not taken in adoption and a child is taken in adoption which is nearest of kin or from the same ancestral family of the adoptive father. Women have no right to adopt except with the assent of her

husband. All these require thorough examination and change and a general law of adoption which can apply to all communities is urgently necessary. In Europe, United States and Canada the Law of Adoption has for many years past been proving extremely helpful to society.

Nothing in this Bill is intended to affect the existing Law of Adoption applicable to Hindus. This Bill is primarily intended for the benefit of communities other than Hindus. It is made clear that if Hindus are desirous of adopting a child under this Act, it shall be competent for them to do so.

JAYASHRI RAIJI.

M. N. KAUL,
Secretary.

